

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
EL PASO DIVISION**

ERIK SALAIZ,

Plaintiff,

v.

CLUTCH HEALTH LLC,

Defendant.

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CAUSE NO. EP-24-CV-77-KC

ORDER

On this day, the Court considered the case. On September 2, 2024, Plaintiff filed a First Amended Class Action Complaint (“FACAC”), ECF No. 16, as a matter of course within twenty-one days after service of Defendant’s Motion to Dismiss, ECF No. 15. *See* Fed. R. Civ. P. 15(a)(1)(B).

Defendant’s Motion to Dismiss remains pending. The Court has discretion to deny a motion to dismiss as moot when an amended complaint supersedes the original complaint. *See, e.g., Rodriguez v. Xerox Bus. Servs., LLC*, No. EP-16-CV-41-DB, 2016 WL 8674378, at *1 (W.D. Tex. June 16, 2016) (collecting cases). “An amended complaint supersedes the original complaint and renders it of no legal effect unless the amended complaint specifically refers to and adopts or incorporates by reference the earlier pleading.” *Stewart v. City of Hous. Police Dep’t*, 372 F. App’x 475, 478 (5th Cir. 2010) (quoting *King v. Dogan*, 31 F.3d 344, 346 (5th Cir. 1994)). The FACAC does not adopt or incorporate by reference any part of the original pleading. *See generally* FACAC. It thus supersedes the original Complaint.

Accordingly, the Motion to Dismiss, ECF No. 15, is **DENIED** as moot. Defendant may file an answer or otherwise respond to the FACAC **by no later than September 16, 2024.**

SO ORDERED.

SIGNED this 3rd day of September, 2024.



KATHLEEN CARDONE
UNITED STATES DISTRICT JUDGE